TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1903~~ 1905.

No. ~~230~~ 14.

REUBEN HODGES, WILLIAM R. CLAMPIT, AND WASH McKINNEY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED APRIL 22, 1904.

(19,305.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 3, 1904.

1 UNITED STATES OF AMERICA:

To the honorable judge of the district court of the United States for the eastern district of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between The United States of America, plaintiff, and Reuben Hodges, William R. Clampit and Wash McKinney, defendants, a manifest error has happened, to the great prejudice and damage of the said defendants, Reuben Hodges, William R. Clampit and Wash McKinney, as is said and appears by the petition herein.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, in the city of Washington, District of Columbia, together with this writ, so as to have the same at the said place in said court on the 20th day of April, 1904, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Jacob Trieber, judge of the district court of the United States for the eastern district of Arkansas, this 21st day of March, 1904.

Attest my hand and seal of the United States dissrict court, for the eastern division of the eastern district of Arkansas, at the clerk's office at Helena, Arkansas, on the day and year last above written.

[Seal of the United States Court, Eastern District Arkansas, Helena.]

EMERSON R. CRUM,
Clerk United States District Court for the Eastern Division, Eastern District of Arkansas.

Allowed by
JACOB TRIEBER,
District Judge.

Service acknowledged this March 21st, 1904.
WM. G. WHIPPLE,
United States Attorney, Eastern District of Arkansas.

1½ [Endorsed:] No. 279. United States *vs.* William R. Clampit, Rabe Hodge and Wash McKinney. United States district court, eastern division, eastern district of Arkansas. Writ of error. Filed April 6th, 1904. —— ——, clerk.

1—230

Return to Writ.

UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said district court, at office in the city of Helena, this 6th day of April, A. D. 1904.

[Seal of the United States Court, Eastern District Arkansas, Helena.]

EMERSON R. CRUM, *Clerk.*

2 UNITED STATES OF AMERICA,
Eastern Division, Eastern District of Arkansas.

Be it remembered, that at a regular term of the district court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden in the United States court rooms, in the city of Helena, on the 5th day of October, A. D. 1903, the same being the first Monday in said month, there was present and presiding, Honorable Jacob Trieber, U. S. district judge; Wm. G. Whipple, Esq., U. S. district attorney; A. S. Fowler, Esq., U. S. marshal, and Emerson R. Cram, clerk of said court, whereupon, among others, the following proceedings were had on the 6th day of October, A. D. 1903, viz:

Empaneling of Grand Jury.

Now on this day the venire for the grand jury at the present term, in pursuance of law and the rules of this court, is returned into court by the marshal, whereupon the said jurors were called, to-wit: Jesse L. Kendall, W. H. Autry, M. Collins, W. L. Segers, Charles Wooten, W. W. Harrison, John Dover, J. J. Barron, John Dudgeon, I. Block, G. P. A. Brown, H. L. Puryear, Wm. E. Lloyd, C. P. Norman, H. P. Grant, John Barrow, Leon Moore, James Fussell, Wilbur Thompson, W. B. Galloway, R. C. Wilson, J. E. Jones, Lewis Spence, M. B. Harvey, S. A. Brownlee, James Bassett, and Charles Sanders, and thereupon M. Collins, Charles Wooten, W. W. Harrison, Leon Moore, James Fussell, and Charles Sanders are upon their several applications, and for legal and sufficient reasons,
3 excused from serving as such grand jurors, and thereupon J. E. Jones, Jesse L. Kendall, W. H. Autry, W. L. Segers, John Dover, J. J. Barron, John Dudgeon, I. Block, G. P. A. Brown, H. L.

Puryear, Wm. E. Lloyd, C. P. Norman, H. P. Grant, John Barrow, Wilbur Thompson, W. B. Galloway, R. C. Wilson, Lewis Spence, M. B. Harvey, S. A. Brownlee, and James Bassett, twenty-one (21) in number, were duly tried, accepted, and by order of the court J. E. Jones is appointed foreman of the grand jury, and thereupon said foreman and his fellows are duly empanelled, sworn and charged by the court as the grand inquest of the United States for the eastern division of the eastern district of Arkansas, and retired to consider of their action.

Fourth day of October term, 1903.

THURSDAY, *October* 8, 1903.

Present, presiding and holding said court, Honorable Jacob Trieber, U. S. district judge, and other officers as noted on the 5th day of October last past.

Report of Grand Jury.

On this day came the grand jury, and having answered to their names, through their foreman, returned into court nine true bills of indictment, which were filed in open court and in the presence of the grand jury, and are numbered 279 to 287, both inclusive, and thereupon the grand jury retired to consider further of its action.

4 *Indictment.*

In the District Court of the United States for the Eastern District of Arkansas and the Eastern Division Thereof, October Term, 1903.

The grand jurors of the United States, chosen, selected and sworn, in and for said district and division, upon their oaths do find and present that W. W. Maples, J. R. Parker and S. L. Rorax, whose Christian names are to these grand jurors unknown, and Rube Hodge, William R. Clampit, John H. Harrison, Lee Bridges, Charles Blake, Clyde Stafford, Will Stafford, Will England, Tom Gozelle, John Parker, Rube Parker, and Wash McKinney, late of said district and division, did heretofore, to wit: on the 17th day of August, A. D. 1903, in the county of Poinsett in said district and division and within the jurisdiction of this court, knowingly, wilfully and unlawfully conspire, to oppress, threaten and intimidate Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton, Jim Hall and George Shelton, citizens of the United States of African descent, in the free exercise and enjoyment of rights and privileges secured to them and each of them by the Con-

stitution and laws of the United States and because of their having exercised the same, to-wit: the said Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton, Jim Hall and George Shelton, being then and there persons of African descent and citizens of the United States and of the State of Arkansas, had then and there made and entered into contracts and agreements with James A. Davis and James S. Hodges, persons then and there doing business under the name of Davis & Hodges as co-partners, carrying on the business of manufacturers of lumber at White Hall, in said county, the said contracts being for the employment by said firm of the said Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton,
5 Jim Hall and George Shelton as laborers and workmen in and about their said manufacturing establishment, by which contracts the said Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton, Jim Hall and George Shelton were on their part to perform labor and services at said manufactory and were to receive on the other hand for their labor and services compensation, the same being a right and privilege conferred upon them by the thirteenth amendment to the Constitution of the United States and the laws passed in pursuance thereof and being a right similar to that enjoyed in said State by the white citizens thereof, and while the said Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton, Jim Hall, and George Shelton were in the enjoyment of said right and privilege the said defendants did knowingly, willfully and unlawfully conspire as aforesaid to injure, oppress, threaten and intimidate them in the free exercise and enjoyment of said right and privilege and because of their having so exercised the same and because they were citizens of African descent enjoying said right, by then and there notifying the said Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton, Jim Hall and George Shelton that they must abandon said contracts and their said work at said mill and cease to perform any further labor thereat, or receive any further compensation for said labor, and by threatening in case they did not so abandon said work to injure them, and by thereafter then and there wilfully and unlawfully marching and moving in a body to and against the place of business of the said firm while the said Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton, Jim Hall and George Shelton were engaged thereat and while they were in the performance of said contracts thereon the said defendants being then and there armed with deadly weapons, threatening and intim-
6 idating the said workmen there employed, with the purpose of compelling them by violence and threats and otherwise to remove from said place of business, to stop said work and to cease the enjoyment of said right and privilege, and by then and there wilfully, deliberately and unlawfully compelling said Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton, Jim Hall and George Shelton to quit said work and abandon said

place and cease the free enjoyment of all advantages under said contracts, the same being so done by said defendants and each of them for the purpose of driving the said Berry Winn, Dave Hinton, Percy Legg, Joe Mardis, Joe McGill, Dan Shelton, Jim Hall and George Shelton from said place of business and from their labor because they were colored men and citizens of African descent, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

WM. G. WHIPPLE,
United States Attorney, Eastern District of Arkansas.

Endorsed: No. 279. District court United States. The United States *vs.* W. W. Maples, J. R. Parker, S. L. Rorax, Rube Hodge, Wm. R. Clampit, John H. Harrison, Lee Bridges, Charles Blake, Clyde Stafford, Will Stafford, Will England, Tom Gozelle, John Parker, Rube Parker and Wash McKinney. Indictment. Section 5508 and 1977. A true bill. J. E. Jones, foreman. Wm. G. Whipple, U. S. attorney. Filed Oct. 8, 1903. Emerson R. Crum, clerk.

7 Fourth day, October 8th, 1903.

UNITED STATES *vs.* W. W. MAPLES, J. R. PARKER, S. L. RORAX, RUBE HODGE, Wm. R. Clampit, John H. Harrison, Lee Bridges, Charles Blake, Clyde Stafford, Will Stafford, Will England, Tom Gozelle, John Parker, Rube Parker, and Wash McKinney.	279.

On this day come the defendants, by their attorney, L. C. Going, Esq., and file their demurrer to the indictment herein.

Demurrer to Indictment.

In the District Court of the United States, Eastern Division, Eastern District of Arkansas.

UNITED STATES *vs.* W. W. MAPLES, J. R. PARKER, S. L. RORAX, RUBE HODGE, Wm. R. Clampit, John R. Harrison, Lee Bridges, Charles Blake, Clyde Stafford, Will Stafford, Will England, Tom Gozelle, John Parker, Rube Parker, and Wash McKinney.	279.

Come the defendants above named in their own proper person, and by their attorney, L. C. Going, and here and now in open court file this, their demurrer to the indictment in this cause, and for cause of demurrer, say:

First. That the allegations, matters and things, set out and charged in said bill of indictment do not constitute a public offense against the laws of the United States.

Second. Said bill of indictment is founded and based upon
8 section 1977 of the Revised Statutes of the United States, being a portion of an act of the Congress of the United States approved on May 31st, 1870, and said section is unconstitutional and void because no warrant or authority is conferred by the Constitution of the United States upon the Congress thereof to enact the same.

Third. Said section, when taken and construed together with section 5508 of the Revised Statutes of the United States in so far as it creates offenses and imposes penalties, is in violation of the Constitution of the United States and an infringement on the rights of the several States and the people thereof.

Fourth. Because the offense created by section- 1977 and 5508 of the Revised Statutes of the United States, under and upon which the indictment herein is based are not constitutionally within the jurisdiction of the courts of the United States, and because the matters and things therein referred to are judicially cognizable by State tribunals only and legislative action thereon is among the rights reserved by the several States and inhibited to Congress by the Constitution.

L. C. GOING,
Att'y for Def'ts.

Wherefore defendants pray that said indictment be quashed, set aside and held for naught and that they be discharged and allowed to go hence without day and for all other proper relief.

L. C. GOING,
Att'y for Def'ts.

Endorsed: No. 279. U. S. district court, east. dist. of Ark., eastern division. United States *vs.* W. W. Maples *et al.* Demurrer. Filed Oct. 8, 1903. Emerson R. Crum, clerk.

9 Fifth day of October term, 1903.

FRIDAY, *October 9th*, 1903.

Present, presiding and holding said court, Honorable Jacob Trieber, U. S. district judge, and other officers as noted on the 5th day of October last past.

UNITED STATES
vs. } 279.
W. W. MAPLES ET AL.

On this day comes the United States, by Wm. G. Whipple, Esq., district attorney, and the defendants in person and by L. C. Going,

Esq., their attorney, and the demurrer heretofore filed was argued by counsel, and the court being fully advised in the premises, doth overrule the same, and on motion of the defendants this cause is continued for the term.

The following opinion was delivered by the court in the case of United States *v.* A. M. Morris, *et al.*, in which the same questions were involved, and which was referred to by the court as the reasons for overruling the demurrer.

10 *Opinion.*

In the District Court of the United States for the Eastern Division of the Eastern District of Arkansas.

UNITED STATES
vs.
A. M. MORRIS ET AL.

On demurrer to the indictment.

TRIEBER, *District Judge:*

The defendants are indicted for a violation of the provisions of section 5508 U. S. Revised Statutes, the specific charge being that they conspired to injure, oppress and intimidate certain citizens of the United States of African descent in the free exercise or enjoyment of certain rights secured to them by the Constitution and laws of the United States on account of their being negroes. The right which it is charged the defendants sought to prevent the persons named in the indictment from exercising on account of their race and color is the right to lease lands and cultivate them, a right alleged to be guaranteed to them by the thirteenth amendment to the Constitution of the United States and the provisions of section 1 of the act of Congress entitled "An act to protect all persons in the United States in their civil rights and furnish means of their vindication" enacted April 9, 1866, 14 Statutes at Large, 27, digested in the U. S. Revised Statutes as section 1978, U. S. Compiled Statutes, p. 1262.

The demurrer challenges the constitutionality of both statutes. The constitutionality of section 5508 is no longer open to controversy, its validity having been determined and upheld by the Su-
11 preme Court in *Ex parte* Yarbrough, 110 U. S. 651; United States *vs.* Waddell, 112 U. S. 76; Baldwin *vs.* Franks, 120 U. S. 678; Logan *vs.* United States, 144 U. S. 291; Motes *vs.* United States, 178 U. S. 458.

The only question therefore, left for determination is the constitutionality of section 1 of the civil rights act, April 9, 1866. Nothing in the Constitution of the United States as originally adopted or

in any of the first twelve amendments to that instrument, adopted shortly after the ratification of the Constitution, would warrant the enactment of this act by Congress. Section 2 of article 4 guaranteeing to citizens of each State all privileges and immunities of citizens in the several States merely secures and protects the right of a citizen of one State of the United States to pass into any other State of the Union for the purpose of engaging in lawful business; to acquire and hold property; to maintain actions in the courts of that State, and to be exempt from taxes and excises not imposed by the State, on its citizens, free from all discriminations, such discriminations being made by the State in its capacity of a sovereign, but does not apply to acts of individuals. Paul *vs.* Virginia, 75 U. S. 168; Ward *vs.* Maryland, 79 U. S. 418; Slaughter-House cases, 83 U. S. 36; Blake *vs.* McClung, 172 U. S. 239.

If the power to enact the legislation involved in this proceeding exists at all it must have been granted by some provisions of the last three amendments to the Constitution, the thirteenth, fourteenth or fifteenth. As the acts contemplated by this statute are those of individuals, as well as of officers in the enforcement of the statutes of a State or in the discharge of official functions, neither the fourteenth nor fifteenth amendments can be relied upon as an authority for it, as it is now well settled that these two amendments have reference solely to actions of the State and not to any action of
12 private individuals, although it is immaterial whether the State acts by its legislative, executive or judicial authority. United States *vs.* Reese, 92 U. S. 214; United States *vs.* Cruikshank, 92 U. S. 542; Virginia *vs.* Rives, 100 U. S. 313; *Ex parte* Virginia, 100 U. S. 339; Civil Rights cases, 109 U. S. 3; United States *vs.* Harris, 106 U. S. 629; James *vs.* Bowman, 190 U. S. 127.

The power of Congress to enact such legislation must, therefore, be found in the thirteenth amendment, else it does not exist. That Congress assumed that its power was derived from that amendment and not from either of the later amendments is conclusively shown by the fact that at the time this law was enacted in 1866 neither the fourteenth nor fifteenth amendments had been ratified, or even submitted by Congress to the States. The fourteenth amendment was submitted for ratification by resolution of June 16, 1866, and declared a part of the Constitution on July 21, 1868, while the resolution to submit the fifteenth amendment to the States was only passed by Congress on February 27th, 1869, and the amendment promulgated as a part of the Constitution on March 30, 1870. The language of the thirteenth amendment differs materially from that used in the two later ones. While the fourteenth amendment provides that "No State shall make or enforce any law which shall abridge," etc., and the fifteenth amendment declares that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account," etc., the thirteenth amendment declares, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly

convicted, shall exist within the United States or any place subject to their jurisdiction." There is no limitation in that amendment confining the prohibition to the States, but it includes everybody within the jurisdiction of the National Government. This
13 distinction in the language of these amendments was fully recognized by the Supreme Court in the Civil Rights cases, 109 U. S. 3. Mr. Justice Bradley, in delivering the opinion of the court, said:

"We must not forget that the province and scope of the 13th and 14th amendments are different; the former simply abolishes slavery; the latter prohibited the States from abridging the privileges or immunities of citizens of the United States, by depriving them of life, liberty or property without due process of law, and from denying to any the equal protection of the laws. The amendments are different, and the powers of Congress under them are different. What Congress has power to do under one, it may not have power to do under the other. Under the 13th amendment, it has only to do with slavery and its incidents. Under the 14th amendment, it has power to counteract and render nugatory all State laws and proceedings which have the effect of abridging any of the privileges or immunities of citizens of the United States, or to deprive them of life, liberty or property without due process of law, or to deny to any of them the equal protection of the laws. Under the 13th amendment, the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, *may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not;* under the 14th, as we have already shown, it must necessarily be and can only be corrective in its character, addressed to counteract and afford relief against State regulations or proceedings." 109 U. S. 23.

Congress is therefore, authorized by the provisions of the thirteenth amendment to legislate against acts of individuals, as well as of the States, in all matters necessary for the protection of the rights granted by that amendment.

Slavery being prohibited within any place subject to the jurisdiction of the United States and Congress being authorized by the second section of the amendment "to enforce this article by appropriate legislation," does that vest it with the power to protect those emancipated from slavery by this constitutional amendment, in the enjoyment of such rights as it is charged in the indictment the defendants conspired to deprive them of, or is that power still solely reserved to the States, notwithstanding the adoption of this amendment?

The powers of Congress are limited to such matters as are expressly or by implication granted to it by the National Constitution,
14 it being an enabling instrument, while the constitutions of the States are limitations upon the power of the legislatures of the respective States. There can be no doubt that the same power may exist at the same time in the nation as well as the States. Gib-

bons *vs.* Ogden, 22 U. S. 1, 235; Passenger cases, 48 U. S. 540, 553, 561; M. K. & T. Ry. Co. *vs.* Haber, 169 U. S. 613, 627. The same act or series of acts may constitute an offense equally against the United States and the State, subjecting the guilty party to punishment under the laws of each government. Fox *vs.* Ohio, 46 U. S. 410, 433; Moore *vs.* Illinois, 55 U. S. 13, 19; United States *vs.* Cruikshank, 92 U. S. 542, 550; *Ex parte* Siebold, 100 U. S. 371, 390; Cross *vs.* North Carolina, 132 U. S. 131, 139. The citizens of the United States resident within any State are subject to two governments; one State and the other National. Every citizen owes allegiance to both of these governments, and within their respective spheres must be obedient to the laws of each. In return he is entitled to demand protection from each within its own jurisdiction. The thirteenth amendment is a great extension of the powers of the National Government. In the language of Mr. Justice Swayne, in United States *vs.* Rhodes, 1 Abb. (U. S.) 28, 37:

"It trenches directly upon the powers of the States and of the people of the States. It is the first and only instance of a change of this character in the organic law. It destroyed the most important relation between capital and labor in all the States where slavery existed. It affected deeply the fortunes of a large portion of their people. It struck out of existence millions of property. The measure was the consequence of a strife of opinions and a conflict of interests, real or imaginary, as old as the Constitution itself. These elements of discord grew in intensity. Their violence was increased by the throes and convulsions of a civil war. The impetuous vortex finally swallowed up the evil and with it forever the power to restore it. Those who insisted upon the adoption of this amendment were animated by no spirit of vengeance. They sought security against the recurrence of a sectional conflict. They felt that much was due to the African race for the part it had borne during the war. They were also impelled by a sense of right and by a strong sense of justice to an unoffending and long suffering people. These considerations must not be lost sight of when we come to examine the amendment in order to ascertain its proper construction."

The effect of this amendment on the negro, as stated by the same learned jurist in that case, is:

"That the emancipation of a native born slave by removing the disability of slavery made him a citizen without any further act of Congress."

"Citizens under our Constitution and laws means free inhabitants born within the United States or naturalized under the laws of Congress." 1 Kent Conn. 292, and the possession of political rights is not essential to citizenship. Minor *vs.* Happersett 88 U. S. 162. 6 Am. & Engl. Encycl. of Law 15.

Every citizen and freeman is endowed with certain rights and privileges, to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free

people. In our Declaration of Independence, the Magna Charta of our republican institutions, it is declared:

"We hold these rights to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness."

Nor were the framers of the constitution of this State less emphatic in the expression of their views on this subject, for in the bill of rights of the State of Arkansas it is provided:

"All men are created equal free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

16 Can there be any doubt that the right to purchase, lease and cultivate lands, or to perform honest labor for wages with which to support himself and family, is among these rights thus declared to be "inherent and inalienable?" In Corfield *vs.* Coryell, 4 Wash. (C. C.) 371, decided as early as 1823, Mr. Justice Washington said:

"What these fundamental rights are would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads;"

and thereupon he enumerated among others "To take, hold and dispose of property, either real or personal." While this opinion was delivered by the learned justice in a cause heard by him on the circuit, it has received the approval of the Supreme Court of the United States in numerous cases. Slaughter House cases, 83 U. S. 36, 75, 97; Butchers' Union Co. *vs.* Crescent City Co., 111 U. S. 746, 762, 764; Blake *vs.* McClung, 172 U. S. 239, 248. In Butchers' Union Co. *vs.* Crescent City Co. *supra*, on page 762, Mr. Justice Bradley in a concurring opinion says:

"The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen."

Again, on page 764, he proceeds:

"I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States."

And again on page 765:

"But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it certainly does deprive him (to a certain extent) of his liberty; for it takes from him the freedom of adopting and following the pursuit which he prefers, which as already intimated, is a material part of the liberty of the citizen."

17 These extracts were cited with approval and reaffirmed by the Supreme Court in Allgeyer *vs.* Louisiana, 165 U. S. 578, 589. See also the able opinion of Judge Jones in "The Peonage cases" 123 Fed., 671.

As is well known, in many of the States in which slavery had existed prior to the adoption of the thirteenth amendment, legislation was enacted in relation to the negroes, which practically established a system of peonage but little removed from that of slavery, and owing to the passions and prejudices aroused by the civil war, and which at that time had not yet been allayed, irresponsible persons would prevent negroes from working or cultivating lands, and the courts of the States were powerless to protect them. It will serve no useful purpose to recite in this opinion the state of affairs then existing, but a review of them may be found in the opinion of Mr. Justice Swayne in United States *vs.* Rhodes, *supra*, and in the Slaughter-House cases, 83 U. S. 36, 70, 80.

To prevent these unjust discriminations against the negro, Congress enacted this Civil Rights act, intending thereby to protect them in the enjoyment of those rights which are generally conceded to be fundamental and inherent in every freeman.

The constitutionality of this act, although it has never been directly passed upon by the Supreme Court of the United States, has been upheld by Mr. Justice Swayne, in The United States *vs.* Rhodes, *supra*, and by Chief Justice Chase, in United States *vs.* Turner, 1 Abb. (U. S.) 84, in both of which cases its constitutionality was directly involved. Mr. Justice Swayne delivered a very elaborate opinion, reviewing most thoroughly the history of the amendment and the authorities bearing upon the issues involved, epitomizing his conclusions as follows:

"It would be a remarkable anomaly if the National Gov-

18 ernment, without this amendment, could confer citizenship on aliens of every race or color, and citizenship, with civil and political rights, on the inhabitants of Louisiana and Florida, without reference to race or color, and can not, with the help of the amendment, confer on those of the African race, who have been born and always lived within the United States, all that this law seeks to give them. It was passed by the Congress succeed-

ing the one which proposed the amendment. Many of the members of both houses were the same. This fact is not without weight and significance. McCulloch *vs.* Maryland, 4 Wheat. 401. The amendment reversed and annulled the original policy of the Constitution, which left it to each State to decide exclusively for itself whether slavery should or should not exist as a local institution, and what disabilities should attach to those of the servile race within its limits. The whites needed no relief or protection, and they are practically unaffected by the amendment. The emancipation which it wrought was an act of great national grace, and was doubtless intended to reach further in its effects as to every one within its scope, than the consequences of a manumission by a private individual. We entertain no doubt of the constitutionality of the act in all its provisions. It gives only certain civil rights. Whether it was competent for Congress to confer political rights also, involves a different inquiry. We have not found it necessary to consider the subject."

In United States *vs.* Cruikshank, 4 Wood, 308, 319, the question before the court was the constitutionality of the enforcement act of May 31, 1870, which Mr. Justice Bradley declared to be unconstitutional as an unauthorized assumption of power by Congress under the fourteenth amendment, but in referring to the Civil Rights act in this cause involved, expressed the following opinion:

"It was supposed that the eradication of slavery and involuntary servitude of every form and description required that the slave should be made a citizen and placed on an entire equality before the law with the white citizen, and, therefore, that Congress had the power, under the amendment, to declare and effectuate these objects. The form of doing this, by extending the right of citizenship and equality before the law to persons of every race and color (except Indians not taxed and, of course, excepting the white race, whose privileges were adopted as the standard, although it embraced many persons, free colored people and others, who were already citizens in several of the States, was necessary for the purpose of settling a point which had been raised by eminent authority, that none but the white race were entitled to the rights of citizenship in this country. As disability to be a citizen and enjoy equal rights was deemed one form of badge of servitude, it was supposed that Congress had the power, under the amendment, to settle this point of doubt, and place the other races on the same plane of privilege as that occupied by the white race.

19 "Conceding this to be true (which I think it is), Congress then had the right to go further and to enforce its declaration by passing laws for the prosecution and punishment of those who should deprive, or attempt to deprive, any person of the rights thus conferred upon them. Without having this power, Congress could not enforce the amendment.

"It cannot be doubted, therefore, that Congress had the power to make it a penal offense to conspire to deprive a person of, or to

hinder him in, the exercise and enjoyment of the rights and privileges conferred by the XIIIth amendment and the laws thus passed in pursuance thereof.

"But this power does not authorize Congress to pass laws for the punishment of ordinary crimes and offenses against persons of the colored race or any other race. That belongs to the State government alone. All ordinary murders, robberies, assaults, thefts, and offenses whatsoever are cognizable only in the State courts, unless, indeed, the State should deny to the class of persons referred to the equal protection of the laws. Then, of course, Congress could provide remedies for their security and protection. But, in ordinary cases, where the laws of the State are not obnoxious to the provisions of the amendment, the duty of Congress in the creation and punishment of offenses is limited to those offenses which aim at the deprivation of the colored citizen's enjoyment and exercise of his rights of citizenship and of equal protection of the laws because of his race, color, or previous condition of servitude.

"To illustrate: If in a community or neighborhood composed principally of whites, a citizen of African descent, or of the Indian race, not within the exception of the amendment, should propose to lease and cultivate a farm, and a combination should be formed to expel him and prevent him from the accomplishment of his purpose on account of his race or color, it cannot be doubted that this would be a case within the power of Congress to remedy and redress. It would be a case of interference with that person's exercise of his equal rights as a citizen because of his race. But if that person should be injured in his person or property by any wrong-doer for the mere felonious or wrongful purpose of malice, revenge, hatred or gain, without any design to interfere with his rights of citizenship or equality before the laws, as being a person of a different race and color from the white race, it would be an ordinary crime, punishable by the State laws only.

"To constitute an offense, therefore, of which Congress and the courts of the United States have a right to take cognizance under this amendment, there must be a design to injure a person, or deprive him of his equal right of enjoying the protection of the laws, by reason of his race, color or previous condition of servitude. Otherwise it is a case exclusively within the jurisdiction of the State and its courts."

These views, as well as those expressed by Mr. Justice Swayne in United States *vs.* Rhodes, *supra*, were approved by the Supreme Court in United States *vs.* Harris, 106 U. S. 629, 640.

20 The allegations in this indictment expressly charge that these acts of the defendants were on account of the parties against whom they were directed being negroes.

Prior to the adoption of the thirteenth amendment, it had been determined by the highest court of the land that even a free negro, whose ancestors were imported into this country and sold as slaves, is not a citizen of the United States, and therefore could not sue in

the courts of the United States, and even if made a citizen by the laws of the State of his residence, the rights thus conferred upon him were limited to that State and did not entitle him to the privileges and immunities of a citizen in any other State. Scott *vs.* Sandford, 60 U. S. 393, 405. Chief Justice Taney, in delivering the opinion of the majority of the court, said:

"Each State may still confer them (the rights of citizenship) upon an alien, or any one it thinks proper, or upon any class or description of persons, yet he would not be a citizen in the sense in which the word is used in the Constitution of the United States, or entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States.

On page 404 of that opinion it is said:

"We think they (negroes) are not (citizens), and that they are not included and were not intended to be included under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at the time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them."

Under this decision, therefore, a negro until after the enactment of the thirteenth amendment and the Civil Rights act of 1866 was, in the language of the court, "so far inferior, that he had no rights which the white man was bound to respect." 60 U. S. 407.

Although this opinion was severely criticised at the time, it was never overruled, and was at the time of the enactment of this
21 Civil Rights act regarded as the law. Obviously to remove all doubts as to the status of these people after the adoption of the thirteenth amendment and to secure to them the rights belonging of right to freemen, Congress enacted this law, declaring all persons born in the United States and not subject to any foreign power to be citizens of the United States, without regard to race, or color, and at the same session passed a resolution submitting to the States for ratification the fourteenth amendment, which provides that all persons born or naturalized in the United States shall be citizens thereof. It is therefore, beyond controversy that the negro's freedom and citizenship are rights secured to him by the Constitution and laws of the United States and which, according to the decision in the Dred Scott case, he did not possess in the absence of such legislation.

The fugitive slave act of February 12, 1793, 1st L., 302, & that of Sept. 18, 1850, 9 St. L., 462, were enacted in the exercise of the power of Congress similar to that sought to be effected by this act. By the provisions of that act it was a penal offense to knowingly and willingly obstruct or hinder the owner of the fugitive slave from seizing or arresting him; or to harbor or conceal such person after notice

that he was a fugitive slave. The constitutionality of these acts was upheld in Jones *vs.* Van Zant, 2 McLean (U. S.), 611; Prigg *vs.* Pennsylvania, 41 U. S., 539; Ableman *vs.* Booth, 62 U. S., 506, as being authorized by article 3 section 2 of the Constitution, which is not as broad as the provisions of the thirteenth amendment. That provision merely provides that:

"No person held to service or labor in one State under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."

The leading case in which this act was sustained by the
22 Supreme Court is Prigg *vs.* Pennsylvania, *supra*. It was there argued that the act of Congress was unconstitutional "because it did not fall within the scope of any of the enumerated powers of legislation confided to that body." Mr. Justice Story, who delivered the opinion of the court, in disposing of that contention said:

"Stripped of its artificial and technical structure, the argument comes to this, that although rights are exclusively secured by, or duties are exclusively imposed upon, the National Government, yet, unless the power to enforce these rights, or to execute these duties can be found among the express powers of legislation enumerated in the Constitution, they remain without any means of giving them effect by any act of Congress; and they must operate solely *proprio vigore*, however defective may be their operation; nay, even although, in a practical sense, they may become a nullity from the want of a proper remedy to enforce them, or to provide against their violation. If this be the true interpretation of the Constitution, it must, in a great measure, fail to attain many of its avowed and positive objects, as a security of rights, and a recognition of duties. Such a limited construction of the Constitution has never yet been adopted as correct, either in theory or practice. No one has ever supposed that Congress could, constitutionally, by its legislation, exercise powers, or enact laws beyond the powers delegated to it by the Constitution. But it has on various occasions, exercised powers which were necessary and proper as means to carry into effect rights expressly given and duties expressly enjoined thereby. The end being required, it has been deemed a just and necessary implication that the means to accomplish it are given also; or, in other words, that the power flows as a necessary means to accomplish the end."

All the judges of the Supreme Court concurred in that view, the only point on which there was a dissent being whether, under the constitutional provision, the powers of Congress were exclusive of the States. Shall the courts be less liberal in construing constitutional provisions in favor of freedom than those in favor of slavery?

In my opinion, Congress has the power, under the provisions of the thirteenth amendment, to protect citizens of the United States in the enjoyment of those rights which are fundamental and belong

to every citizen, if the deprivation of these rights is solely on account of his race or color, as a denial of such rights is an
23 element of servitude within the meaning of that amendment.

In the language of Mr. Justice Field, in his dissenting opinion in the Slaughter House cases:

"The abolition of slavery and involuntary servitude was intended to make everyone born in this country a freeman and as such to give him the right to pursue the ordinary avocations of life without other restraint than such as affects all others, and to enjoy equally with them the fruits of his labor. A prohibition to him to pursue certain callings, open to others of the same age, condition and sex, and to reside in places, where others are permitted to live, would so far deprive him of the rights of a freeman, and would place him as respects others in a condition of servitude. A person allowed to pursue only one trade or calling, and only in one locality of the country, would not be, in the strict sense of the term, in a condition of slavery, but probably none would deny that he would be in a condition of servitude. He certainly would not possess the liberties nor enjoy the privileges of a freeman. The compulsion which would force him to labor even for his own benefit only in one direction or in one place, would be almost as oppressive and nearly as great an invasion of his liberty, as the compulsion which would force him to labor for the benefit or pleasure of another, and would equally constitute an element of servitude." 83 U. S. 90.

That the right to lease lands and to accept employment as a laborer for hire are fundamental rights, inherent in every free citizen, is indisputable, and a conspiracy by two or more persons to prevent negro citizens from exercising these rights because they are negroes is a conspiracy to deprive them of a right secured to them by the Constitution and laws of the United States, within *and* meaning of section 5508, U. S. Revised Statutes.

For these reasons, the demurrer to the indictment is overruled. 125 Fed. 322.

Endorsed: No. 280 to 286. United States *vs.* A. M. Morris, *et al.* In U. S. district court at Helena, Arkansas. Criminal. Opinion of the court. Filed Oct. 15, 1903. Emerson R. Crum, clerk.

24 UNITED STATES OF AMERICA, }
Eastern Division, Eastern District of Arkansas. }

Be it remembered, that at a regular term of the district court of the United States, in and for the eastern division of the eastern district of Arkansas, begun and holden in the United States court rooms, in the city of Helena, on the 14th day of March, A. D. 1904, the same being the second Monday in said month, there was present and presiding, Honorable Jacob Trieber, U. S. district judge; Wm. G. Whipple, Esq., U. S. district attorney; A. S. Fowler, Esq.,

U. S. marshal, and Emerson R. Crum, clerk of said court, whereupon, among others, the following proceedings were had on Wednesday, March 16th, 1904, viz:

UNITED STATES
vs. } 279.
W. W. MAPLES.

On this day, on motion, this cause is continued as to defendant, W. W. Maples, on account of his illness.

25 UNITED STATES
vs.
J. R. PARKER, S. L. ROKAX, RUBE Hodge, Wm. R. Clampit, John H. Harrison, Lee Bridges, Charles Blake, Clyde Stafford, Will Stafford, Will England, Tom Gozelle, John Parker, Rube Parker, and Wash McKinney. } 279. Offence, Conspiracy.

Comes the United States, by Wm. G. Whipple, Esq., district attorney, and come the defendants to the bar of the court in answer to their recognizance, and by L. C. Going, Esq., their attorney, and having had hearing of said indictment, and being demanded concerning the premises how they will acquit themselves thereof, they saith that they are not guilty thereof, and for good or evil put themselves upon the country, and Wm. G. Whipple, Esq., district attorney, who on behalf of the United States prosecutes, doth the like, and the court in the presence of the defendants, doth proceed to empanel a jury and a jury came to-wit—John H. Darr, R. W. Friend, J. E. Jordan, E. S. Jones, Adam Reeder, T. M. Karnegay, J. H. McPherson, R. L. Benton, H. K. Smith, Vick Townley, Ed Scott and H. Brown, twelve good and lawful men of the district, who were duly tried, empaneled and sworn well and truly to try and a true deliverance make between the United States and the defendants, and a true verdict give according to the law and the evidence, and thereupon the jury proceeded to hear the evidence on the part of the United States, as well as on the part of the defendants, and having heard all the evidence and this cause not being concluded on this day the same is continued until tomorrow.

26 Fourth day of March term, 1904.

THURSDAY, *March 17th*, 1904.

Present, presiding and holding said court, Honorable Jacob Trieber, U. S. district judge, and other officers as noted on March 14th last past.

UNITED STATES
vs. } 279.
J. R. PARKER ET AL.

This cause came on for further hearing this day, and thereupon came the jurors, duly empaneled and sworn to try said cause, and having heard all the evidence and argument of counsel, and being charged and instructed by the court, retire to consider of their verdict.

UNITED STATES
vs. } 279.
J. R. PARKER ET AL.

Now come the jurors in this cause and return into court the following verdict: "We, the jury, find the following named defendants guilty as charged in the indictment, Rube Hodge, Wm. R. Clampit, Wash McKinney, and the other defendants not guilty. R. W. Friend, foreman," whereupon it is ordered by the court that defendants J. R. Parker, S. L. Rorax, Jno. H. Harrison, Lee Bridges, Charles Blake, Clyde Stafford, Will Stafford, Will England, Tom Gozelle, John Parker and Rube Parker, be discharged from said indictment and their bondsmen released, and that defendants Rube Hodge Wm. R. Clampit and Wash McKinney be taken into custody by the marshal.

27 Sixth day of March term, 1904.

SATURDAY, *March 19th*, 1904.

Present, presiding and holding said court, Honorable Jacob Trieber, U. S. district judge and other officers as noted on March 14th last past.

UNITED STATES
vs. } 279. Offense, Conspiracy,
RUBE HODGE and WILLIAM R. CLAMPIT. } Secs. 5508 and 1978.

On this day come the defendants, Rube Hodge and William R. Clampit to the bar of the court to receive sentence.

Whereupon, all and singular, the premises being seen and by the court fully understood,

It is therefore considered, ordered, adjudged and sentenced that said defendants, Rube Hodge and William R. Clampit, do pay to the United States a fine of one hundred dollars for said offense, and that the United States have execution therefor, and that they be imprisoned for and during the space of one year and one day in U. S. prison, at Atlanta, Georgia, and that said defendants be here-

inafter ineligible to any office of profit or trust created by the Constitution or laws of the United States, and that the marshal of this district convey the said prisoners to the U. S. prison aforesaid and deliver them to the custody of the keeper thereof.

And that the clerk of this court make out for said marshal two copies of this judgment and sentence, duly certified under the seal of this court, one of which the said marshal shall deliver to the keeper of said U. S. prison and the other return and file with the receipt of said keeper thereon.

28 UNITED STATES *vs.* WASH MCKINNEY. } 279. Offense, Conspiracy, Secs. 5508 and 1978.

On this day comes the defendant, Wash McKinney, to the bar of the court to receive sentence.

Whereupon, all and singular, the premises being seen and by the court fully understood,

It is therefore considered, ordered, adjudged and sentenced that said defendant Wash McKinney do pay to the United States a fine of one hundred dollars for said offense and that the United States have execution therefor, and that he be imprisoned for and during the space of sixty days in Pulaski County jail at Little Rock, Arkansas, and that said defendant be hereinafter ineligible to any office of profit or trust created by the Constitution or laws of the United States, and that the marshal of this district convey the said prisoner to the Pulaski County jail aforesaid and deliver him to the custody of the keeper thereof.

And that the clerk of this court make out for said marshal two copies of this judgment and sentence, duly certified under the seal of this court, one of which the said marshal shall deliver to the keeper of said Pulaski County jail and the other return and file with the receipt of said keeper thereon.

29 In the District Court of the United States, Eastern Division, Eastern District of Arkansas.

UNITED STATES OF AMERICA *vs.* WILLIAM R. CLAMPIT, REUBEN HODGE, and WASH MCKINNEY. } Application for Writ of Error.

To Hon. Jacob Trieber, judge of said court:

Come now the defendants, William R. Clampit, Reuben Hodge and Wash McKinney, and file herein their petition to this honorable court for a writ of error to the Supreme Court of the United States from the decision and judgment rendered in this cause, and said defendants respectfully assign the following errors:

First. That the allegations, matters and things, set out and charged in the bill of indictment under which they were tried and convicted in this court, do not constitute a public offense against the laws of the United States, and that the court erred in overruling the demurrer to the indictment.

Second. The bill of indictment against these defendants, and the jurisdiction which this court has assumed of the charges therein contained, is founded upon section- 1977, 1978 and section 5508 of the Revised Statutes of the United States and said sections are unconstitutional and void because no warrant or authority is conferred upon Congress to enact the same by the Constitution, and for the further reason that when said sections are construed together they undertake to create offenses and impose penalties in violation of the Constitution.

Third. Because the offense created by sections 1977, 1978 and 5508 of the Revised Statutes of the United States under and upon which the defendants have been indicted, tried and convicted in this court, is not constitutionally within the jurisdiction of the courts of
30 the United States and because the matters and things therein referred to, are judicially cognizable by State tribunals only, and legislative action thereon is among the rights reserved by the several States and inhibited to Congress by the Constitution.

Defendants further say that the verdict of the jury in this cause is contrary to the law, is contrary to the evidence adduced at the trial and contrary to both the law and the evidence.

Wherefore these defendants pray that a writ of error issue out of this court to the end that this cause may be reviewed by the Supreme Court of the United States, that they be granted a reasonable time within which to prepare and present to this court or the judge thereof their bill of exceptions herein, and that during the pendency of this cause, they be granted bail in a reasonable sum to be fixed by the court and for such other and further relief as in justice they may be entitled.

____ ____,
Attorney for Defendants.

Writ of error granted to Supreme Court of the United States returnable in thirty days, upon execution by the defendants William R. Clampit and Reuben Hodge of a supersedeas bond in the sum of one thousand dollars for each and a bond for five hundred dollars by Wash McKinney. Such bonds when approved by the judge or the clerk of this court to operate as a supersedeas of the judgment.

JACOB TRIEBER, *Judge.*

Endorsed: No. 279. United States *vs.* Reuben Hodge, William R. Clampit and Wash McKinney. In U. S. district court at Helena, Arkansas. Criminal. Application for writ of error. Filed March 21st, 1904. Emerson R. Crum, clerk.

31 Seventh day of March term, 1904.

MONDAY, *March* 21*st*, 1904.

Present, presiding and holding said court, Honorable Jacob Trieber, U. S. district judge, and other officers as noted on the 14th day of March last past.

UNITED STATES
vs.
WILLIAM R. CLAMPIT, RUBE HODGE, and WASH MCKINNEY. } 279.

On this day come the defendants, Rube Hodge, William R. Clampit and Wash McKinney, by their attorney, L. C. Going, Esq., and file their assignment of errors and petition for a writ of error to the Supreme Court of the United States, with the order of the judge of this court granting said appeal endorsed on said application for a writ of error, which is in words and figures following, to-wit:

Writ of error granted to the Supreme Court of the United States, returnable in thirty days, upon execution by the defendants, Reuben Hodge and William R. Clampit, of a supersedeas bond in the sum of one thousand dollars for each, and a bond for five hundred dollars by Wash McKinney, such bonds when approved by the judge or the clerk of this court to operate as a supersedeas of the judgment.

(Signed) JACOB TRIEBER, *Judge.*

And defendants also file the citation, showing service thereof, duly acknowledged by Wm. G. Whipple, Esq., United States district attorney for this district, and also file supersedeas bonds in conformity with the order of the judge of this court, approved by the judge as to said William R. Clampit and Wash McKinney, and by the clerk of this court as to said Rube Hodge, and thereupon

It was ordered by the court that execution of judgment be stayed pending the final determination on the writ of error, whereupon a writ of error was issued by the clerk, and service thereof duly acknowledged by the endorsement of Wm. G. Whipple, Esq., United States attorney for this district.

32 In the United States District Court for the Eastern District of Arkansas.

UNITED STATES, Plaintiff,
vs.
W. R. CLAMPIT, Defendant. } 279. Supersedeas Bond.

Know all men by these presents that we W. R. Clampit as principal and W. N. Watts, J. C. Mitchell, W. B. Gravette as sureties

acknowledge ourselves and are held and firmly bound unto the United States of America in the full and just sum of one thousand dollars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this — day of March in the year of our Lord one thousand nine hundred and four.

Whereas lately at the March term A. D. 1904, of the United States district court for the eastern division of the eastern district of Arkansas, in a suit pending in said court between The United States of America, plaintiff and W. R. Clampit defendant a judgment and sentence was rendered against the said W. R. Clampit and the said W. R. Clampit has obtained a writ of error from the Supreme Court of the United States to reverse the judgment and sentence in the aforesaid suit and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the Supreme Court of the United States at the city of Washington thirty days from and after the date of said citation, which said citation has been duly served.

Now the condition of the above obligation is such that if the said W. R. Clampit shall appear in the Supreme Court of the United States on the first day of the next term thereof, to be held at
33 the city of Washington on the — day of October A. D. 1904, and from day to day thereafter during said term and from term to term and from time to time until finally discharged therefrom, and shall abide by and obey all orders made by the said Supreme Court of the United States in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said United States district court for the eastern division of the eastern district of Arkansas, against him shall be affirmed by the Supreme Court of the United States, then the above obligation to be void, else to remain in full force, virtue and effect.

W. R. CLAMPIT. [SEAL.]
W. N. WATTS. [SEAL.]
W. B. GRAVETTE. [SEAL.]
J. C. MITCHELL. [SEAL.]

Approved:
JACOB TRIEBER,
Judge of the Eastern District of Arkansas.

STATE OF ARKANSAS, }
County of Poinsett. }

We, W. N. Watts and W. B. Gravette and J. C. Mitchell do solemnly swear that we are the owners of the real estate in the county and State aforesaid opposite our respective names and of the value

set forth; that it is free and clear of and from all incumbrances and not our respective homesteads, and that we are each worth the sum of five hundred dollars over and above all our just debts, liabilities and exemptions, and subject to sale on execution.

34 Name.	Description of property.	Value.
W. N. Watts.	Lots 4 & 9 in block No. 13 original survey of Harrisburg, S. W. ¼ sec. 26 twp. 10 N. R. 3 E.	$1000.00
W. B. Gravette.	S. ½ N. W. ¼ sec. 26 T. 11 N. R. 3 E.	1500.00
J. C. Mitchell.	Lots 15, 16, 17, & 18 block No. 7 original survey town of Harrisburg	2000.00

W. N. WATTS.
W. B. GRAVETTE.
J. C. MITCHELL.

Sworn and subscribed to before me this 19th day of March, 1904.

LOUIS G. MINTON,
Notary Public.

[SEAL.]

My commission expires Jan. 15th, 1907.

Endorsed: No. 279. United States *vs.* Wm. R. Clampit. In U. S. district court at Helena, Arkansas. Supersedeas bond. Filed Mar. 21st, 1904. Emerson R. Crum, clerk.

35 In the United States District Court for the Eastern District of Arkansas.

UNITED STATES, Plaintiff,
vs.
WASH MCKINNEY, Defendant. } 279. Supersedeas Bond.

Know all men by these presents that we Wash McKinney as principal and B. A. McKinney, L. C. Going and J. A. Bradsher as sureties acknowledge ourselves and are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this — day of March in the year of our Lord one thousand nine hundred and four.

Whereas lately at the March term A. D. 1904, of the United States district court for the eastern division of the eastern district of Arkansas, in a suit pending in said court between The United States of America, plaintiff and Wash McKinney defendant a judgment and

sentence was rendered against the said Wash McKinney and the said Wash McKinney has obtained a writ of error from the Supreme Court of the United States to reverse the judgment and sentence in the aforesaid suit and a citation directed to the said United States of America citing and admonishing the United States of America to be and appear in the Supreme Court of the United States at the city of Washington thirty days from and after the date of said citation, which said citation has been duly served.

Now the condition of the above obligation is such that if the said Wash McKinney shall appear in the Supreme Court of the United States on the first day of the next term thereof, to be held at
36 the city of Washington on the — day of October A. D. 1904, and from day to day thereafter during said term and from term to term and from time to time until finally discharged therefrom, and shall abide by and obey all orders made by the said Supreme Court of the United States in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said United — district court for the eastern division of the eastern district of Arkansas, against him shall be affirmed by the Supreme Court of the United States, then the above obligation to be void, else to remain in full force, virtue and effect.

WASH McKINNEY. [SEAL.]
B. A. McKINNEY. [SEAL.]
L. C. GOING. [SEAL.]
J. A. BRADSHER. [SEAL.]

Approved:

JACOB TRIEBER,
Judge of the Eastern District of Arkansas.

STATE OF ARKANSAS, }
County of Poinsett. }

We, Ben A. McKinney and L. C. Going, J. A. Bradsher do solemnly swear, that we are the owners of the real estate in the county and State aforesaid opposite our names & of the value set forth, that it is free from all liens & not our respective homesteads.

		Value.	
Ben McKinney.	N. ½ N. E. ¼ sec. 18 twp. 10 N. r'ge 4 E.....	300	
	S. ½ S. E. and N. W. S. E. ¼ sec. 22 twp. 10 N. r'ge 3 E.....	500	800.00
L. C. Going.	Lots 7 & 8 block 13 original survey of Harrisburg.....		3000.00
J. A. Bradsher.	S. W. ¼ sec. 21 twp. 11 N. r'ge 3 east.		1000.00

& that we are each worth the sum of five hundred dollars, over & above all our just debts & liabilities & not exempt from execution.

37

J. A. BRADSHER.
B. A. McKINNEY.
L. C. GOING.

Subscribed and sworn to before me this 19 day of March, 1904.

LOUIS G. MINTON,
Notary Public.

[SEAL.]

My commission expires Jan. 15th, '07.

Endorsed: No. 279. United States *vs.* Wash McKinney. In U. S. district court at Helena, Arkansas. Supersedeas bond. Filed March 21st, 1904. Emerson R. Crum, clerk.

38 In the United States District Court for the Eastern District of Arkansas.

UNITED STATES, Plaintiff,
vs.
RUBE HODGE, Defendant. } 279. Supersedeas Bond.

Know all men by these presents that we Rube Hodge as principal and John Hodge, J. C. Mitchell, Benj. Harris, J. A. Bradsher and W. H. Joiner as sureties acknowledge ourselves and are held and firmly bound unto the United States of America in the full and just sum of one thousand dollars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 21 day of March in the year of our Lord one thousand nine hundred and four.

Whereas lately at the March term A. D. 1904, of the United States district court for the eastern division of the eastern district of Arkansas, in a suit pending in said court between The United States of America, plaintiff, and Rube Hodge, defendant, a judgment and sentence was rendered against the said Rube Hodge and the said Rube Hodge has obtained a writ of error from the Supreme Court of the United States to reverse the judgment and sentence in the aforesaid suit and a citation directed to the said United States of America citing and admonishing the United States of America to be and appear in the Supreme Court of the United States at the city of Washington thirty days from and after the date of said citation, which said citation has been duly served.

Now the condition of the above obligation is such that if the said Rube Hodge shall appear in the Supreme Court of the United States on the first day of the next term thereof, to be held at the city of Washington on the — day of October A. D. 1904, and
39 from day to day thereafter during said term and from term to term and from time to time until finally discharged therefrom, and shall abide by and obey all orders made by the said Supreme Court of the United States in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said United States district court for the eastern division of the eastern district of Arkansas, against him shall be affirmed by the Supreme Court of the United States, then the above obligation to be void, else to remain in full force, virtue and effect.

his
RUBE x HODGE. [SEAL.]
mark
his
JOHN x HODGE. [SEAL.]
mark
J. C. MITCHELL. [SEAL.]
BENJ. HARRIS. [SEAL.]
J. A. BRADSHER. [SEAL.]
W. H. JOINER. [SEAL.]

Witness:
GUY C. WORTHLEY.
Witness:
W. W. NELMS.

Approved:
EMERSON R. CRUM,
Clerk of the U. S. District Court
at Helena, Arkansas.

STATE OF ARKANSAS, } *ss:*
County of Poinsett, }

We, J. C. Mitchell, Benj. Harris and J. E. Bradsher do solemnly swear that we are the owners of the real estate in the county and State aforesaid opposite our respective names and of the value set forth; that it is free and clear of and from all incumbrances and not our respective homesteads, and that we are each worth the sum of five hundred dollars over and above all our just debts, lia-
40 bilities and exemptions, and subject to sale on execution:

Name.	Description of property.	Value.
J. C. Mitchell.	Lots 15, 16, 17, and 18, block No. 7, original survey, town of Harrisburg.....	$2000.00
Benj. Harris.	E. ½ N. E. & N. ½ S. E. sec. 15 town 11 N. 3 E. 160 acres valued.....	800.00
J. A. Bradsher.	S. W. ¼ sec. 21, twp. 11 N., range 3 east...	1000.00

J. C. MITCHELL.
BENJ. HARRIS.
J. A. BRADSHER.
his
JOHN x HODGE.
mark

Witness:
W. W. NELMS.

Subscribed and sworn to before me this the 21st day of March, A. D. 1904.

B. F. COLE, *Clerk*,
[SEAL.] By W. W. NELMS, *D. C.*

Endorsed: No. 279 United States *vs.* Rube Hodge. In U. S. district court, at Helena, Arkansas. Supersedeas bond. Filed March 26th, 1904. Emerson R. Crum, clerk.

41 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern division of the eastern district of Arkansas, wherein Reuben Hodges, William R. Clampit and Wash McKinney, are plaintiffs, and The United States of America, is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

In witness whereof, I have hereunto affixed my name this the 21st day of March, in the year of our Lord, one thousand nine hundred and four, and in the 128th year of our Independence.

{Seal of the United States Court, Eastern District Arkansas, Helena.}

JACOB TRIEBER,
United States District Judge for the Eastern District of Arkansas, Presiding.

Attest:
EMERSON R. CRUM, *Clerk.*

I hereby acknowledge service of the above citation on behalf of the United States, this 21st day of March, A. D. 1904.

WM. G. WHIPPLE,
United States District Attorney for the Eastern District of Arkansas.

[Endorsed:] No. 279. United States *vs.* Wm. R. Clampit, Rube Hodge and Wash McKinney. United States district court, eastern district of Arkansas, eastern division. Citation. Filed March 21st, 1904. Emerson R. Crum, clerk.

42 UNITED STATES OF AMERICA, }
Eastern Division, Eastern District of Arkansas. }

I, Emerson R. Crum, clerk of the district court of the United States, in and for the eastern division of the eastern district of Arkansas, do hereby certify that the foregoing forty-one typewritten pages, numbered from 1 to 41, both inclusive, contain a true and compared copy of the record and proceedings in the cause of United States *vs.* Wm. R. Clampit, Rube Hodge and Wash McKinney, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, at office in the city of Helena, this the 6th day of April, A. D. 1904.

{ Seal of the United States Court, Eastern District Arkansas, Helena. }

EMERSON R. CRUM, *Clerk.*

Endorsed on cover: File No. 19,305. E. Arkansas D. C. U. S. Term No. 230. Reuben Hodges, William R. Clampit, and Wash McKinney, plaintiffs in error, *vs.* The United States. Filed April 22d, 1904. File No. 19,305.